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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 STANLEY KIDIAVAYI,

11 Plaintiff,

12 v.

13 UNIVERSITY OF NEVADA, DR.
14 BRUCE LEONARD, personally, DOES I-
15 X, inclusive and ROE Corporations I-X,
16 inclusive,

Defendants.

Case No. 2:16-cv-01202-KJD-NJK

ORDER

17 Presently before the Court are Defendants' Motions for Attorney's Fees and Costs (#63/74).
18 Plaintiff filed a response in opposition (#67/75) to which Defendants replied (#69/76).

19 On March 29, 2017 the Court granted Defendant's motion to dismiss Plaintiff's federal
20 claims because the statute of limitations had expired, denied Plaintiff's motion to amend as futile,
21 and declined to exercise supplemental jurisdiction over the remaining state claims, and remanded.
22 Now, Defendants have moved for an award of attorney's fees and costs as a prevailing party under 42
23 U.S.C. § 1988 and 28 U.S.C. § 1927.

24 **42 U.S.C. § 1988**

25 As a general rule, "a district court may in its discretion award attorney's fees to a prevailing
26 defendant...upon a finding that the plaintiff's action was frivolous, unreasonable, or without

1 foundation, even though it was not brought in subjective bad faith.” Christiansburg Garment Co. v.
2 E.E.O.C., 434 U.S. 412, 421 (1978) (Title VII); see also Hughes v. Rowe, 449 U.S. 5, 14-16 (1980)
3 (42 U.S.C. § 1983). By frivolous, the court means that the litigation must be “meritless in the sense
4 that it is groundless or without foundation.” Hughes, 449 U.S. at 14; see also Dooley v. Reiss, 736
5 F.2d 1392, 1396 (9th Cir. 1984). In other words, litigation is frivolous if the result is obvious or the
6 arguments are wholly without merit. See Glanzman v. Uniroyal, Inc., 892 F.2d 58, 61 (9th Cir.
7 1989).

8 “A defendant stands in a different equitable position from that of a prevailing plaintiff.
9 Nevertheless, Congress intended to protect defendants from ‘litigation having *no* legal or factual
10 basis.’” Mitchell v. Los Angeles Ct. Superintendent of Schools, 805 F.2d 844, 847 (9th Cir. 1986)
11 (quoting Christiansburg, 434 U.S. at 420) (emphasis added). “Only in exceptional cases did Congress
12 intend that defendants be awarded attorney’s fees.” Id. at 848.

13 This is not an exceptional case. Although the Court ultimately determined that the claim was
14 time barred, Plaintiff has grounds for appeal based on his argument that the claim should have been
15 tolled during NERC’s review. There is nothing indicating that the Plaintiff’s claim for discrimination
16 was without merit, groundless or without foundation. Also, depositions indicated that there were
17 concerns regarding the grading process with a different student of a different sex, race, and gender to
18 that of the Plaintiff. See Deposition Transcripts of Mr. Festus Ebonka (#40-1). Furthermore,
19 Defendants made changes to the policy to help avoid any discriminatory practices, including a policy
20 to not review a student’s photo before being admitted into the program. See Deposition Transcript of
21 Dr. Juanita Fain (#40-2). Defendants have failed to meet their burden to establish that Plaintiff’s
22 action was frivolous, unreasonable or without foundation. Therefore, the Court declines to award
23 attorney’s fees pursuant to 42 U.S.C. § 1988.

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1 **28 U.S.C. § 1927**

2 Pursuant to 28 U.S.C. § 1927, “[a]ny attorney...who so multiplies the proceedings in any case
3 unreasonably and vexatiously may be required by the court to satisfy personally the excess costs,
4 expenses, and attorneys’ fees reasonably incurred because of such conduct.” See also In re Girardi,
5 611 F.3d 1027, 1060-61 (9th Cir. 2010). The imposition of sanctions under § 1927 requires a finding
6 that counsel acted “recklessly or in bad faith.” United States v. Blodgett, 709 F.2d 608, 610 (9th Cir.
7 1983) (citing Barnd v. City of Tacoma, 664 F.2d 1339, 1343 (9th Cir. 1982)). Defendants have failed
8 to meet their burden in establishing that Plaintiff’s counsel acted recklessly or in bad faith. Therefore,
9 the Court declines to award attorney’s fees pursuant to 28 U.S.C. § 1927.

10 Accordingly, IT IS HEREBY ORDERED that Defendants’ Motions for Attorney’s Fees and
11 Costs (#63/74) are **DENIED**.

12 DATED this 14th day of June 2017.

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Kent J. Dawson
United States District Judge
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